

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

RONALD WEISS, et al.,

Plaintiffs,

vs.

DEL WEBB COMMUNITIES, INC., et al.,

Defendants.

Case No. 2:13-cv-00513-MMD-PAL

ORDER

The court conducted a hearing on the parties' competing proposed discovery plan and scheduling orders on May 14, 2013. Christopher Carson and Trent Richards appeared on behalf of the Plaintiffs. Russell Collings, Megan Mahoney, Jeffrey Ballin, Allen Leavitt, Melanie Polk, John Augenstein, Chatree Thongkham, Nakesha Duncan and Theodore Chrissinger appeared on behalf of Defendants.

The Complaint in this case was filed in state court December 19, 2009. It was initially filed on behalf of a single plaintiff who alleged a construction defect claim. Twenty-nine named Plaintiffs were eventually named. The state court judge granted Plaintiff's motion to certify a class of homeowners of fifteen different model homes within the Anthem Country Club who alleged their homes contain various construction defects. Substantial discovery, including expert discovery, took place before the state court certified the class. The Defendants filed a petition for writ of mandamus in the Nevada Supreme Court challenging the state court judge's decision to certify a class and the state court proceedings were stayed while the petition was pending. On March 25, 2013, the Nevada Supreme Court declined to disturb the state court's class certification order and the stay was lifted. The same day, the Defendants removed this case.

The parties conducted a Rule 26(f) conference on April 16, 2013, but were unable to agree on a stipulated proposed discovery plan and scheduling order. Plaintiffs propose a standard 180-day plan

1 measured from the date of removal. The Defendants propose an 18-month discovery cutoff measured
2 from the date of the Rule 26(f) conference. The court canvassed counsel concerning the discovery
3 completed to date, and the discovery needed to prepare this case for trial. Counsel for Plaintiffs
4 indicated that most of the expert depositions have been taken in this case. Two of Defendants'
5 remaining experts are scheduled for deposition the end of May or early June. Plaintiffs intend to
6 propound additional written discovery.

7 The putative class consists of 831 potential members who have been identified in the discovery
8 conducted before removal. Plaintiffs filed a motion for a hearing on Plaintiffs' motion for approval of
9 the notice of class action (Dkt. #39) April 26, 2013. The motion for approval of notice to the class was
10 filed in state court before removal. Plaintiffs believe that the parties are substantially in agreement on
11 the form of notice to be provided to putative class members with the exception of two points. Plaintiffs
12 propose a 45-day period for putative class members to opt out of the class. Defendants propose 90
13 days. Additionally, the parties dispute the language in the proposed form of notice concerning
14 attorneys' fees. Plaintiffs were willing to submit the motion on the papers but asked for a hearing to
15 alert the court that the motion had been filed before removal and needed a ruling.

16 Defendants requested 18 months to conduct discovery, in part, because notice has not yet been
17 sent to putative class members. However, counsel for Defendants acknowledge that discovery could
18 proceed while putative class members are provided notice and given an opportunity to opt out.
19 Defendants asked for an additional 18 months to complete discovery because there are twelve third-
20 party Defendants, each of whom has at least one expert who needs to be deposed. Expert depositions
21 are scheduled through July 11, 2013. In addition, the Defendants intend to depose the 29 named
22 Plaintiffs and to take Rule 30(b)(6) depositions of each of the third-party Defendants. Defense counsel
23 was not prepared to address the parties' differences on the motion for approval of notice to the class and
24 requested a hearing.

25 Given the substantial amount of discovery that has already taken place, including expert
26 depositions, the court will allow the parties 180 days, measured from the date of the Rule 26(f)
27 conference in which to complete discovery.


28 ///

Following the hearing, the court conferred with the district judge who has referred the motion for approval of the notice of class action to the undersigned for decision.

IT IS ORDERED that:

1. The following discovery plan and scheduling order deadlines shall apply:
 - a. Last date to complete discovery: **October 14, 2013.**
 - b. Last date to amend pleadings and add parties: **July 15, 2013.**
 - c. Last date to file interim status report: **August 14, 2013.**
 - d. Last date to disclose experts pursuant to Fed. R. Civ. P. 26(a)(2): **August 14, 2013.**
 - e. Last date to disclose rebuttal experts: **September 13, 2013.**
 - f. Last date to file dispositive motions: **November 12, 2013.**
 - g. Last date to file joint pretrial order: **December 12, 2013.** In the event dispositive motions are filed, the date for filing the joint pretrial order shall be suspended until 30 days after a decision of the dispositive motions.
2. The disclosures required by Fed. R. Civ. P. 26(a)(3), and any objections thereto, shall be included in the pretrial order.
3. Applications to extend any dates set by this discovery plan and scheduling order shall, in addition to satisfying the requirements of LR 6-1, be supported by a showing of good cause for the extension. All motions or stipulations to extend discovery shall be received no later than **4:00 p.m., September 23, 2013**, and shall fully comply with the requirements of LR 26-4.
4. Plaintiff's Motion for a Hearing (Dkt. #39) is **GRANTED**, and a hearing on Plaintiffs' Motion for Approval of Notice of Class Action is set for **Friday, June 7, 2013, at 9:30 a.m., in Courtroom 3B.**

Dated this 16th day of May, 2013.



Peggy A. Leen
United States Magistrate Judge